

REMARKS

A Request for Continued Examination (RCE) was filed in this application on February 12, 2003. Claims 37,38,40,42-50 and new claims 59-70 were presented for examination in the RCE. In the first post-RCE Official Action, all of the claims were rejected for non-compliance with the written description and enablement provisions of 35 U.S.C. §112, first paragraph. Examiner McGarry reiterated his earlier position that the claims were not allowable in view of the recitation of "proteinaceous material obtainable from *Xenorhabdus nematophilus*". In response to the aforementioned Official Action, Claim 37 was amended to delete the recitation that gave rise to the 35 U.S.C. §112, first paragraph rejections, and to call for cells into which a nucleotide sequence of Figure 2 has been introduced and a cellular extract from said cells. Also, Claim 38 was rewritten in independent form as new Claim 71, with Claims 62-70 being either directly or indirectly dependent from Claim 71. Claims 38 and 40 were cancelled.

The application was subsequently held abandoned for alleged non-compliance with a requirement for corrected drawings, and a petition was filed for withdrawal of the holding of abandonment, which was granted.

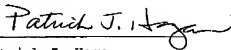
A telephone interview was initiated by Examiner McGarry with the undersigned on or about July 14, 2005 for the purpose of proposing an Examiner's Amendment which, if accepted, would place this application in condition for allowance. The proposed amendment involved cancellation of currently withdrawn claims 51-58, along with claims 62-71. All the remaining claims, i.e. claims 37 and 42-50 were indicated to be allowable in their present form.

Claims 51-71 are cancelled in accordance with the present amendments. The cancellation of claims 51-71 is

without prejudice to applicants' right to prosecute these claims in a continuing application, as provided in 35 U.S.C. §121.

In review of the indication of allowability of claims 37 and 42-50 by Examiner McGarry, as noted above, and the cancellation of claims 51-71 in accordance with this amendment, it is respectfully requested that a Notice of Allowance be issued for claims 37 and 42-50.

Respectfully submitted,
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